(2011) 09 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

Ganpat Rama Madhavi APPELLANT

Vs

NEW INDIA ASSURANCE COMPANY LTD RESPONDENT

Date of Decision : 20-09-2011

Acts Referred:

Citation : 2011 0 NCDRC 627 : 2011 4 CPJ 210 : 2011 4 CPR 276

Hon'ble Judges : ANUPAM DASGUPTA J.

Advocate : S.B.PRABHAVALKAR

Judgement

1. THIS revision petition is directed against the order dated 23.09.2010 of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai (in short, the State Commission) in First Appeal no. A 10/537. By this order, the State Commission set aside the order of the District Consumer Disputes Redressal Forum, Alibaug (in short, the District Forum) in complaint case no. 98 of 2009.

2. THE petitioner was the complainant before the District Forum. He alleged deficiency in service on the part of the respondent insurance company (opposite party OP before the District Forum) in that the latter had repudiated the insurance claim of the complainant in respect of his fishing boat (Ganesh Laxmi), which sank off the coast of Murud (near Kasa Fort) in the Arabian sea on 02.05.2007. The crew of the boat was saved by another boat from Shrivardhan but the boat sank completely. A police complaint was lodged with Police Station, Murud which drew up a Panchnama reporting the loss at Rs.15 lakh due to sinking of the boat. The complainant s insurance claim of Rs.7.24 lakh for the boat was, however, repudiated by the OP against which the complainant also represented on 08.07.2006, which too was of no avail. Aggrieved by the repudiation of the insurance claim and also rejection of the representation, the complainant filed a consumer complaint before the District Forum. The District Forum over -ruled the objection of the OP that the complaint filed in September 2009 was time -barred with effect from the date of peril (02.05.2007) and held that in this case the period of limitation under section 24A of the Consumer Protection Act, 1986 (in short, the Act) needed to be computed with effect from

the date of repudiation of the claim, namely, 23.07.2008. The District Forum also held that the conclusion in surveyor s report that the boat was not damaged due to any peril covered by the insurance policy was untenable because the boat had sunk and the surveyor could not inspect the boat. His report was thus based only on technical factors, like weather conditions, etc. Holding that the breakage of the bottom plank of the boat leading to sinking of the boat was a peril covered by the insurance policy, the District Forum directed the OP to pay Rs.7.42 lakh towards the insurance claim along with interest @ 6% per annum from the date of the claim (18.06.2007) till the date of payment, as well as compensation of Rs.10,000/ - for mental torture and cost of Rs.3,000/ -; all payments to be made within 45 days from the date of the order.

3. THE OP/insurance company challenged this order of the District Forum before the State Commission. After consideration of the pleadings, documents and evidence brought on record, the State Commission set aside the order of the District Forum and dismissed the complaint holding that the complaint, filed in September 2009, was time barred with reference to the date of occurrence of the cause action, namely, 02.05.2007 (the date of sinking of the insured boat). The State Commission also held that the complainant had not been able to establish that the boat sank on account of any peril of the sea . According to the State Commission both the surveyors had analysed the situation in detail and come to the conclusion on the basis of which the insurance company repudiated the claim. Thus, the insurance company could not be held guilty of deficiency in service within the meaning of these terms under the Act. It is against this order that the present revision petition has been filed.

4. I have heard Mr. S. B. Prabhavalkar, learned Counsel for the petitioner. He argued at length that the complaint was within the period of limitation of two years provided in section 24 A of the Act, because the cause of action could be reckoned only from the date of repudiation of the insurance claim of the petitioner/complainant till then the insured could not have had any grievance against the insurance company. However, in reply to a query, Mr. Prabhavalkar fairly conceded that if the insurance company had not repudiated the claim as it did (within 2 years of the date of the peril) and taken more than two years to take a decision on the claim, the aggrieved insured could not have waited indefinitely and would have had to file a consumer complaint within two years from the date of occurrence of the peril. In other words, his contention that the period of limitation under section 24A of the Act ought to be reckoned in this case ought to be reckoned with effect the date of repudiation of the claim was prima facie not tenable. Moreover, even if it were accepted that the complaint was filed within the statutory time limit, the main issue of sinking of the fishing boat being on account of any peril of the sea provided for in the insurance policy and the quantum of consequent loss would both need to be established by the complainant. It is clear from the order of the State Commission that the complainant had not been able to establish either. In such a situation, there is no ground to interfere with the order of the State Commission under section 21(b)

of the Act. The revision petition is accordingly dismissed.